

September 25, 2019

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1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4  
5 *In Re* FLINT WATER CASES Case No. 16-10444  
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7 \_\_\_\_\_/  
8 STATUS CONFERENCE  
9

10 BEFORE THE HONORABLE JUDITH E. LEVY  
11 UNITED STATES DISTRICT JUDGE

12 SEPTEMBER 25, 2019

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P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: All right. Well we're now on the record in the Flint Water Cases. And this is the date and a little bit after the time that was set for a hearing. Essentially a status conference and a number of miscellaneous issues that are traveling along with us in the case.

And I just want to say in general that although civil litigation is not what we often wish it could be in terms of filing a case and soon thereafter having a trial and a resolution of the case, instead there are a lot of twists and turns. I'm trying not to use water words like ebbs and flows. But there really are.

And there are a lot of complicated legal issues that come up in the course of the case. And at one o'clock we had a meeting in chambers with lawyers for the plaintiffs for the putative class action that is pending as well as representatives of many of the defendants.

And we spent about an hour and 15 minutes I think working very hard on a number of the sort of details that weigh the case down. And my job in all of this is to on the one hand keep my foot on the gas pedal so that the cases move forward towards resolution for everyone's benefit.

And I just have to repeat once again that those who -- there is no one in this room who does not benefit from

1 moving these cases along. And certainly plaintiffs or  
2 potential plaintiffs want to see a resolution. But also the  
3 defendants need their lives to move on, need a resolution, and  
4 need to be able to present their best defense without memories  
5 fading, documents getting lost or destroyed and things of that  
6 nature.

7 So I think it benefits everyone to keep working  
8 consistently and diligently on the cases.

9 So what I set forth here is an agenda that has a lot  
10 of weeds. We are really in the weeds trying to work out a  
11 system for some pretty complicated litigation to go forward.

12 So with those just preliminary remarks we still need  
13 to have appearances for the record. So what I'd like to do,  
14 we have some people who I think are not lawyers sitting in our  
15 jury box, but we also have some lawyers. And maybe you are  
16 lawyers but not lawyers on the case. And I have not  
17 previously heard your names as lawyers.

18 So what I'd like to do is we have Deborah Greenspan  
19 is sitting in the front corner. She's the special master who  
20 I appointed to assist me and the parties, all of the parties  
21 in managing the litigation. So that's Deborah Greenspan.

22 MR. KURTZ: Chris Stritmatter for Ed Kurtz.

23 THE COURT: Okay.

24 MR. BLAKE: Jayson Blake, liaison counsel for the  
25 state court action.



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1 THE COURT: Okay.

2 MR. STAMATOPOLOUS: Gregory Stamatopolous on behalf  
3 of class plaintiffs.

4 THE COURT: Just a minute. My pen ran out. Okay.  
5 After Jayson Blake.

6 MR. STAMATOPOLOUS: Gregory Stamatopolous on behalf  
7 of class plaintiffs.

8 THE COURT: Oh right. Sorry.

9 MS. HURWITZ: Good afternoon, Judge. Julie Hurwitz  
10 on behalf of the class plaintiffs.

11 MS. BEREZOFSKY: Esther Berezofsky on behalf of class  
12 plaintiffs.

13 MS. LINDSEY: Good afternoon, Your Honor. Cynthia  
14 Lindsey on behalf of class plaintiffs.

15 THE COURT: Thank you.

16 MS. YOUNG: Good afternoon, Your Honor. Trachelle  
17 Young on behalf of class plaintiffs.

18 MS. BINGMAN: Good afternoon. Teresa Bingman on  
19 behalf of class plaintiffs.

20 MR. GOODMAN: Good afternoon, Your Honor. Bill  
21 Goodman on behalf of class plaintiffs and on behalf of the  
22 Marble plaintiffs. Sole leading plaintiffs' counsel in that  
23 case, but not for long.

24 THE COURT: Okay. Thank you. And I did receive a  
25 motion to withdraw, Mr. Pitt, from a couple of your

1 colleagues. Could they submit a proposed order and then we'll  
2 get that entered. Okay.

3 MR. GOODMAN: I believe that Ms. Bingman also has  
4 submitted one this morning.

5 THE COURT: Oh. I'm not sure I saw that.

6 MS. BINGMAN: It didn't go through yet.

7 THE COURT: Oh, okay.

8 MS. BINGMAN: Thank you.

9 THE COURT: Good. Thank you.

10 MS. DEZBOR: Good afternoon, Judge. Danielle Dezbor  
11 on behalf of individual plaintiffs.

12 MR. LANCIOTTI: Patrick Lanciotti for the individual  
13 plaintiffs.

14 MR. STERN: Good afternoon, Your Honor. Corey Stern  
15 as co-liaison counsel for individual plaintiffs.

16 MR. PITT: Michael Pitt and Mr. Leopold was here for  
17 co-lead class.

18 THE COURT: Okay.

19 MR. KIM: Good afternoon, Your Honor. William Kim on  
20 behalf of City of Flint.

21 MR. BERG: Rick Berg also for City of Flint.

22 MR. RUSEK: Good afternoon, Your Honor. Alexander  
23 Rusek on behalf of Howard Croft.

24 MR. ERICKSON: Your Honor, Philip Erickson here on  
25 behalf of the LAN defendants and Leo A Daly.

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1 MR. THOMPSON: Good afternoon, Your Honor. Craig  
2 Thompson for defendant Rowe Professional.

3 MS. DEVINE: Good afternoon, Your Honor. Alaina  
4 Devine for VNA defendants.

5 MR. CAMPBELL: Good afternoon, again, Your Honor,  
6 James Campbell. I represent the VNA defendants as well.

7 MR. MONROE: Steve Monroe on behalf of the Bern  
8 plaintiffs, Your Honor.

9 THE COURT: Thank you.

10 MR. FAJEN: James Fajen on behalf of Adam Rosenthal.

11 MR. GRAVES: Jim Graves Your Honor on behalf of the  
12 Estate of Margaret Pete.

13 MR. SANDERS: Good afternoon, Your Honor. Herb  
14 Sanders on behalf of the Alexander plaintiffs.

15 THE COURT: Thank you.

16 MR. KLEIN: Good afternoon, Your Honor. Sheldon  
17 Klein on behalf of the City of Flint.

18 MR. MORGAN: Thaddeus Morgan for Liane Shekter Smith.

19 MR. PATTWELL: Mike Pattwell for Dan Wyant and Brad  
20 Wurfel.

21 MR. GRASHOFF: Philip Grashoff on behalf of Stephen  
22 Busch.

23 MR. ZEINEH: Good afternoon, Your Honor. Edwar  
24 Zeineh on behalf of Daugherty Johnson.

25 MR. MARKER: Good afternoon, Your Honor. Christopher

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1 Marker here on behalf of Michael Glasgow.

2 MS. SMITH: Susan Smith here on behalf of McLaren  
3 Mutual Medical Center.

4 MR. BARBIERI: Charles Barbieri on behalf of Patrick  
5 Cook and Michael Prysby.

6 MR. SEGARS: Darryl Segars on behalf of the Alexander  
7 plaintiffs.

8 MS. SHEA: Ashley Shea on behalf of the class  
9 plaintiffs.

10 MR. PERKINS: Good afternoon, Your Honor, and good  
11 afternoon to your staff. May it please this honorable Court,  
12 my name is Todd Russell Perkins appearing on behalf of Mr.  
13 Earley.

14 THE COURT: Thank you.

15 MR. MATEO: Good afternoon, Your Honor. T. Santino  
16 Mateo also on behalf of Mr. Earley.

17 MR. KUHL: Good afternoon. Richard Kuhl for the  
18 state defendants.

19 MR. GALVIN: Good afternoon, Your Honor. Joseph  
20 Galvin for Jeff Wright, Genesee County Drain Commission.

21 MR. WOLF: Good afternoon, Your Honor. Barry Wolf on  
22 behalf of Gerald Ambrose.

23 MR. JENSEN: Good afternoon, Your Honor. Larry  
24 Jensen on behalf of Hurley Medical Center, Ann Newell, and  
25 Nora Birchmeier.

1 THE COURT: It's just not enough lawyers. Okay.

2 Well, what we have is the agenda to work through.  
3 And the first issue on the agenda took the majority of our  
4 time in chambers. And it's the issue of scheduling  
5 depositions.

6 And what has become evident is now that discovery is  
7 underway in these cases, the scheduling of depositions, which  
8 is the oral questioning of witnesses or parties in the case,  
9 has become a little bit unwieldy.

10 And Mr. Campbell for the VNA defendants, Mr.  
11 Erickson, and others for LAN explained. And we discussed  
12 together that there are potentially in the next wave of the  
13 litigation 600 depositions to be taken over significantly  
14 fewer than 600 days. And so that means that more than one  
15 deposition will need to take place on a day.

16 Some depositions can take 7 hours. But also I have  
17 authorized depositions to last more than -- longer than the  
18 rules provide for in this case because there are multiple  
19 parties wanting to question the same witness.

20 So what we have -- what we arrived at as -- is that  
21 we could not solve the problem in chambers in terms of how the  
22 get these scheduled when everyone that needs to or wants to  
23 attend is available to attend and how to make sure that no one  
24 goes without notice of when their deposition is.

25 So to that end, what we're going to do is have a

1 group of representative lawyers propose an amendment to the  
2 case management order that would have a discovery scheduling  
3 and a discovery taking protocol in it. And that will include  
4 a representative of the class plaintiffs.

5 I think I heard that Jordan Connors will do that on  
6 behalf of the putative class. A representative from Veolia from  
7 LAN from the individual plaintiffs. Ms. Smith for McLaren.  
8 Potential -- did we end up including -- Mr. Kim, did you want  
9 --

10 MR. KIM: Yes, Your Honor.

11 THE COURT: Okay. You are on this. And this group  
12 will present -- submit by e-mail a proposed protocol to be  
13 added to the -- an amended case management order. It will  
14 include, as I just said, how to schedule these things. But  
15 also a protocol for the allocation of time during a deposition  
16 with a lead questioner. But time reserved for other lawyers  
17 for other parties to ask questions as well.

18 And I just want to remind everybody that depositions  
19 are a matter of public interest at times and members of the  
20 public can attend depositions. They usually don't. I know of  
21 very few times that they have done that. But so I just take  
22 the issue of scheduling them and conducting them in an orderly  
23 way very seriously.

24 So is there anything further on that that anyone  
25 wants to be heard on?

1           The schedule is not a part of the docket of a case.  
2           That's among the lawyers to work out. But it's important to  
3           me that it be worked out so that all parties to the case have  
4           access to the depositions. So okay. Great.

5           And the next issue is -- also relates to discovery.  
6           And there is a protocol in place already for nonparty  
7           subpoenas that has been already sort of hammered out and  
8           agreed upon and implemented and ordered by myself in the case.  
9           And but Mr. Weglarz -- is Mr. Weglarz here?

10           MS. DEZBOR: No. I'm here for him, Judge.

11           THE COURT: Okay. State your name, your client, and  
12           what you'd like to say on this issue.

13           MS. DEZBOR: Yes, Your Honor. Danielle Dezbor here  
14           for Todd Weglarz for the individual plaintiffs Brown and  
15           Rogers. And Mr. Weglarz and I discussed this point this  
16           morning. And our only concern is at present we have to go  
17           through other counsel, other plaintiffs counsel, to issue  
18           subpoenas.

19           We just wanted to be able to issue subpoenas prior to  
20           depositions in order to get the records that we need prior to  
21           these depositions to be able to engage in meaningful deps.

22           THE COURT: Okay. And I -- that's what I sort of  
23           understood in the submission from the co-liaison counsel was  
24           the issue that you wanted to bring to my attention.

25           MS. DEZBOR: Yes.

1           THE COURT: And at this point the protocol is there  
2 because this is an unwieldy complex piece of litigation. And  
3 there is a significant and important need to have things  
4 coordinated. Because undoubtedly some of the subpoenas you  
5 want to issue either have already been issued and then we  
6 don't want to burden the target of these subpoenas to reissue  
7 information. And other people may also want that information.

8           And so I -- at this point I will deny the request to  
9 issue your own subpoenas in your case. In part because at  
10 this point we're traveling down a road to address the  
11 legionella cases. And we -- I have not yet -- it's not fully  
12 briefed even in terms of knowing what causes of action survive  
13 the motions to dismiss and what don't.

14           So I think at this point I don't see a compelling  
15 reason to have one case of all this litigation go off on its  
16 own track issuing subpoenas, getting documents, not putting  
17 them -- not identifying them in the same way that the protocol  
18 requires.

19           So I appreciate your interest in that and understand  
20 it but ask that at this time you continue to abide by the  
21 protocol. And if you have a problem and it's not working, you  
22 can certainly seek to get that issue on a discovery conference  
23 call at a later date.

24           MS. DEZBOR: Thank you, Judge.

25           MR. GOODMAN: Your Honor, may I?



1 THE COURT: Certainly.

2 MR. GOODMAN: William Goodman on behalf of -- in this  
3 case on behalf of the Marble plaintiffs. It's true that --  
4 everything you said of course is absolutely true and in order.

5 However the cases, Mr. Weglarz's cases as well as the  
6 Marble case, have a novel and separate defendant in them in  
7 the guise of McLaren Hospital. And with regards to taking  
8 those depositions, I take it what the Court was saying is that  
9 we need to wait for further instruction as to the direction of  
10 that part of the case and then consider both issuance of  
11 subpoenas and taking depositions at that point.

12 THE COURT: Yes. I mean -- yes. I mean, and what  
13 was on the agenda was the document -- nonparty document  
14 subpoenas. And now you're referring to taking depositions in  
15 a case that has not yet got an answer.

16 MR. GOODMAN: That's right.

17 THE COURT: Yeah. So what I ask is that you, you  
18 know, await your case to have an answer and enter into  
19 discovery.

20 MR. GOODMAN: However, in the course of the discovery  
21 that is going to be scheduled or scheduled, there may be  
22 questions that arise with regard to these cases which I take  
23 both counsel and I would like to be able to pose in the course  
24 of those depositions.

25 THE COURT: Absolutely. And that's where you have

1 Mr. Stern and Mr. Lanciotti and others representing your  
2 interest in getting a discovery protocol in place so that more  
3 than one lawyer can ask questions of a defendant or a party or  
4 a witness.

5 So I don't yet know what they're going to present to  
6 me. I'm looking forward to it. But I'm certain it has been  
7 resolved in other cases and can be resolved here so that you  
8 can either have a certain amount of time reserved to ask the  
9 questions specific to your clients' interest.

10 MR. GOODMAN: Our clients and our novel defendant as  
11 well.

12 THE COURT: Certainly.

13 MR. GOODMAN: Thank you.

14 THE COURT: Yeah.

15 MR. GRASHOFF: Your Honor.

16 THE COURT: Mr. Grashoff. So please state your name  
17 and your client.

18 MR. GRASHOFF: Philip Grashoff on behalf of Stephen  
19 Busch.

20 May I take a step back and ask for clarification?

21 THE COURT: Yes.

22 MR. GRASHOFF: I heard the Court indicate that the  
23 depositions are basically open to the public. If that is the  
24 case, has the Court considered that some of the public that  
25 may attend these depositions may be parties to this

1 litigation? Either individual plaintiffs or they may be class  
2 action representatives.

3 I would ask the Court to clarify whether they should  
4 be allowed to hear what other witnesses are testifying to. I  
5 don't think that that's proper and would urge the Court to  
6 exclude.

7 THE COURT: Certainly parties could be sequestered if  
8 you think it's appropriate and not permitted in the room.

9 MR. GRASHOFF: I mean, we've got --

10 THE COURT: I'm not saying anything new about this  
11 case. It's all cases. Depositions are not sealed proceedings  
12 unless ordered by the Court to be sealed.

13 MR. GRASHOFF: As you have said many times, this is a  
14 little bit of a unique circumstance. We have this overarching  
15 class action that we just know the representatives. And we  
16 have individual plaintiffs. I am suggesting that it's  
17 probably not proper for them to attend a deposition to hear  
18 what other witnesses are saying.

19 THE COURT: Okay. Well, then we'll take that on a  
20 case by case basis. If a witness shows up -- or a party shows  
21 up or and wants to listen to another person's deposition that  
22 they really should be sequestered from, you'll request it  
23 right then and there.

24 And if that can't be accomplished, you'll call me.  
25 There will be a court reporter present there. We'll go on the

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1 record. And I'll make a decision at that time.

2 MR. GRASHOFF: Thank you.

3 THE COURT: But I would urge people to tell your  
4 clients that they don't want to jeopardize their position in  
5 the case by listening to another party's testimony that could  
6 impact them. But if it's an expert and a plaintiff wants to  
7 listen to the legionella expert, I don't see why -- how that  
8 could be a problem, but ...

9 MR. GRASHOFF: As you say, we'll deal with it on a  
10 case by case basis.

11 THE COURT: Yeah.

12 MR. GRASHOFF: Thank you.

13 THE COURT: Exactly. But Mr. Grashoff, while I have  
14 your attention, we previously had a discovery conference call  
15 where -- which related to whether Mr. Stephen Busch, your  
16 client, could be called in to a deposition prior to December  
17 26th of 2019.

18 And I asked that the plea agreement that he entered  
19 into with the State of Michigan be provided to me, which you  
20 did. And I appreciate it very much. And I was surprised but  
21 also pleased to read that there was a provision that you did  
22 not share with me, which reads that your client understands  
23 that he may be subpoenaed to testify at a hearing and/or trial  
24 and he agrees to appear at any hearing and/or trial and will  
25 not invoke the Fifth Amendment right not to testify.

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1           So we don't need to wait until December 27th of 2019  
2     for his deposition because it's part of his plea agreement  
3     with the State of Michigan that he won't invoke the Fifth  
4     Amendment right not to testify at a hearing or trial. And in  
5     this case, hearing.

6           MR. GRASHOFF: Did I hear you say I didn't share that  
7     with you?

8           THE COURT: You sent this to me. But you said that  
9     -- I understood you to be indicating that there was -- that he  
10    needed to wait until after the 26th of December because  
11    otherwise he would need to invoke his Fifth Amendment right  
12    not to testify.

13          MR. GRASHOFF: That's correct.

14          THE COURT: And he doesn't. He's agreed here --

15          MR. GRASHOFF: With the state Attorney General's  
16    Office on the state charges.

17          THE COURT: It's not limited to that. But we won't  
18    go into that. So I'm just indicating I think it was LAN that  
19    was seeking his deposition that if they wished to do it before  
20    December 26th, I think this agreement requires that he appear  
21    and testify and not invoke his Fifth Amendment rights.

22          MR. GRASHOFF: Your Honor, may I request the  
23    opportunity to have Mr. Mark Kriger submit a memo to you  
24    explaining why that is not correct interpretation?

25          THE COURT: No. You can submit it. Mr. Kriger is

1 not on our docket. If he wants to file an appearance, he can  
2 file an appearance. But I can't accept a brief from somebody  
3 who doesn't represent a party.

4 MR. GRASHOFF: I will file it and attach his  
5 declaration and memo to it. And he is --

6 THE COURT: Well only do that if you learn from I  
7 think it's Mr. Erickson that he wants to take the deposition  
8 before December 26th. We don't need unnecessary filings. But  
9 this is clearly important and I read this as saying he won't  
10 invoke his Fifth Amendment rights.

11 MR. GRASHOFF: For the record, Your Honor,  
12 respectfully we disagree with the Court's interpretation of  
13 that order and interpretation of that language as it applies  
14 to these proceedings.

15 THE COURT: Okay.

16 MR. GRASHOFF: Thank you.

17 THE COURT: Thank you. All right. So we're up to  
18 the third item to be discussed today. And what I have is I  
19 have a motion from Veolia to strike the proposed definitions  
20 of classes in the Carthan master class action. And that has  
21 been fully briefed and I will hold an oral argument on that at  
22 our next status conference which is November 6th.

23 So for those lawyers who are party to that motion,  
24 that is when we will hear. We'll put this in an order. But  
25 that's when we'll have an oral argument. I don't anticipate

1 making a decision at the hearing. But that could change if I  
2 don't even -- if it changes. We'll find out.

3 So we now are up to going from the weeds to the tiny  
4 blades of grass on the master and short form complaints. And  
5 the first issue is whether Liane Shekter Smith's name should  
6 be removed from the amended short form complaint. Liane  
7 Shekter Smith is no longer in those cases. And so it is fine  
8 with me to remove it going forward.

9 But Mr. Stern, did you have a proposal for how we  
10 might address that?

11 MR. STERN: Your Honor, Corey Stern. If the idea is  
12 that the actual short form complaint that is available to  
13 people has her name removed, that's fine for us to do. If the  
14 idea is that everybody who's ever filed a short form complaint  
15 is going to file a new short form complaint, then that would  
16 be very difficult.

17 THE COURT: No, I don't want to do that. But I think  
18 going forward it makes sense to not have her name on the short  
19 form complaint. Just not to confuse any new cases. We've had  
20 a couple of new cases filed within the last month. So I just  
21 want to make sure that --

22 MR. STERN: So I think that the short form complaint  
23 might be available on the Court's website. Because I'm not  
24 sure how new filers are getting it. Because until they enter  
25 the litigation, I'm not sure that they're aware of even what

1 the process is.

2 So I can submit to the Court a new short form  
3 complaint that does not contain the names of defendants that  
4 have been dismissed from the case.

5 THE COURT: Okay.

6 MR. STERN: And then if the Court, if there's some  
7 electronic way in which the Eastern District of Michigan can  
8 put the short form complaint on the website as it has with  
9 other documents that make it available to potential  
10 plaintiffs, that would probably be the best way to deal with  
11 it.

12 THE COURT: Okay. That sounds good.

13 MR. STERN: And I can get that to you as early as  
14 Monday or Tuesday of next week.

15 THE COURT: Okay.

16 MR. MORGAN: Your Honor, Thad Morgan for Liane  
17 Shekter Smith.

18 THE COURT: Yes, Mr. Morgan.

19 MR. MORGAN: So to clarify, what I just heard the  
20 Court say is that my client does not have to answer any  
21 nonclass individual lawsuits even if their name is checked?

22 THE COURT: Absolutely.

23 MR. MORGAN: Okay.

24 THE COURT: And that brings up -- thank you for  
25 stating it that way. That really brings up the next -- well,



1 an issue that's in here. Which is that as the case has  
2 evolved, after the Walters and Sirls opinion from the Court  
3 came out, there were certain causes of action that were not  
4 viable and are not going to continue.

5 No defendant has to answer allegations that might  
6 have been incorporated in a short form complaint about causes  
7 of action that no longer exist.

8 MR. MORGAN: I have one other issue and this comes  
9 under --

10 MADAM COURT REPORTER: It comes under what?

11 THE COURT: Thad Morgan.

12 MR. MORGAN: Thad Morgan for Liane Shekter Smith.  
13 Sorry. There is no hyphen between Shekter and Smith. I don't  
14 know if the Court can correct that in the captions.

15 THE COURT: Okay. We weren't sure. We spent quite a  
16 bit of time going back through the record. And we will  
17 correct it now that we know.

18 MR. MORGAN: Thank you. It will save phone calls  
19 from my client.

20 THE COURT: Okay. We have Mr. Goodman then Mr. Klein  
21 and Mr. Erickson.

22 MR. GOODMAN: Is the Court's ruling with regard to  
23 Shekter Smith being essentially struck from the short form  
24 complaints applicable to the Marble case as well? Because I  
25 think Marble was different than Sirls and --

1 THE COURT: Well, I don't know. I'd have to look  
2 back at the Marble case. I mean, Walters and Sirils there was  
3 a statute of limitations problem with Shekter Smith. And Mr.  
4 Morgan can you tell me where she has landed in Carthan?

5 MR. MORGAN: Carthan she's still a party to. Carthan  
6 is a class action.

7 THE COURT: Yeah, yeah. So --

8 MR. GOODMAN: I was addressing the Marble case.

9 THE COURT: Oh, the Marble.

10 MR. GOODMAN: I'm sorry, Your Honor.

11 THE COURT: I see.

12 MR. GOODMAN: Because in Marble in the original  
13 filing so called long-form complaint --

14 THE COURT: Yes, it's applicable.

15 MR. GOODMAN: She was identified as a defendant, I  
16 believe. And that was within the statute of limitations.

17 MR. MORGAN: But Your Honor, Thad Morgan for Liane  
18 Shekter Smith. The Court's orders are clear in that the  
19 master short form complaint is the controlling and operative  
20 pleading for all individual non class --

21 THE COURT: This is a tough question.

22 MR. MORGAN: Which is why I asked for clarification.

23 THE COURT: Yeah.

24 MR. MORGAN: So if that's the case, even if she was  
25 named in the original Marble complaint, that was superseded

1 and supplanted by the master long form --

2 THE COURT: It was. I understand what you're saying.  
3 But Mr. Goodman is pointing out that in Walters and Sirls, she  
4 was not in their complaints. And they wanted to amend to  
5 include her. And I didn't permit that because they were  
6 outside of the statute of limitations. Mr. Stern.

7 MR. STERN: I think -- I was just going to --

8 THE COURT: You're Corey Stern on behalf --

9 MR. STERN: Sorry. Corey Stern on behalf of  
10 individual plaintiffs.

11 This issue, how the Court decides this issue actually  
12 impacts whether to remove somebody from a short form  
13 complaint. Because if Your Honor decides that in Marble and  
14 Brown and in other legionella cases who properly pled Liane  
15 Shekter Smith as a defendant initially and there are claims  
16 that survive against Liane Shekter Smith, other legionella  
17 plaintiffs who file lawsuits by way of a short form complaint  
18 using Your Honor's protocol, they should have the opportunity  
19 to check a box that includes Liane Shekter Smith or any other  
20 defendant if those claims survive.

21 If we're utilizing the same short form complaint,  
22 which we are, for legionella cases and lead cases and property  
23 damage cases and any type of case that involves an individual,  
24 before we just blanket remove a defendant, unless Your Honor  
25 says that it applies, I think that it is important to first

1 figure out what happens in Brown and Marble before we take  
2 such a step to put on a website a very confined short form  
3 which limits who people might be able to sue.

4 THE COURT: I think that's the case. So --

5 MR. MORGAN: Thad Morgan for Liane Shekter Smith.  
6 Then I don't understand the Court's orders. I think they're  
7 docket numbers 114 and 347 that made it clear that the long  
8 form complaint regardless of any other individual complaints  
9 is the operative and controlling pleading.

10 THE COURT: You're absolutely right about that. But  
11 I think what has been identified is a potential problem with  
12 that, those previous orders, is that if Mr. Goodman had  
13 previously sued within the statute of limitations Liane  
14 Shekter Smith, others did not that were the sample cases  
15 coming forward. I just need to give that a little bit more  
16 thought and potentially some briefing.

17 Mr. Erickson.

18 MR. ERICKSON: Thank you, your Honor. Philip  
19 Erickson for the LAN defendants. A couple of things. My  
20 understanding -- and I'll stand corrected if I'm wrong. But I  
21 thought that the prior orders of the Court reflected that it  
22 was the short form complaints which were the operative  
23 complaints.

24 And of course those short form complaints incorporate  
25 by reference the master long form complaint. But I just

1 thought that should be clarified. Because I believe it is the  
2 short form complaints which are operative based on the Court's  
3 prior orders.

4 MR. STERN: Your Honor, again I'm advocating in many  
5 ways for Mr. Goodman's clients.

6 But the reality is if Hunter Shkolnik and I drafting  
7 a master complaint made a decision based on all the  
8 submissions that came in that Liane Shekter Smith should not  
9 be included or anybody should not be included or we fail to  
10 include it by mistake or purposefully, if someone else has  
11 filed a complaint within the applicable statute and they bring  
12 a claim that wasn't included or they have a plaintiff or  
13 defendant that wasn't included, they can't be penalized -- I  
14 would submit that they should not be penalized --

15 THE COURT: No, I agree with you. So, okay, Mr.  
16 Morgan, here's the -- I think this is worth focusing on  
17 because it is potentially more than just the Marble case will  
18 have that issue come up.

19 So what we can do is set a briefing schedule to  
20 address just this issue so that we don't have to wait for the  
21 outcome of the Marble and the Brown case to know the answer.

22 MR. GOODMAN: If I may just add one thing, Your  
23 Honor. William Goodman on behalf of the Marble plaintiffs.  
24 If I may just add one more consideration which is that I  
25 believe at some point in time this Court has expressed some

1       uncertainty as to whether the Marble and other McLaren cases  
2       are to be consolidated in total, let us say, with Mr. Stern's  
3       case.

4               THE COURT: Yeah, I'm not revisiting that right now.

5               MR. GOODMAN: Right.

6               THE COURT: I know that has been a thread. Yeah.

7               MR. GOODMAN: Just adding a wrinkle.

8               THE COURT: Okay.

9               MR. MORGAN: Your Honor, Thad Morgan for Liane  
10       Shekter Smith. Can I ask the Court's indulgence then to the  
11       extent there are answer deadlines coming up for short form  
12       complaints that my client be excused from that until the Court  
13       makes a final decision?

14              THE COURT: Until we resolve this, absolutely.  
15       Because I was about to say she doesn't have to answer anything  
16       and now I'm thinking that she may have to answer some that  
17       incorporated her before the statute of limitations problem was  
18       identified.

19              MR. MORGAN: Thank you.

20              THE COURT: So what we'll do in the order following  
21       this hearing is indicate that Liane Shekter Smith, that  
22       answering her requirement to answer any complaints is stayed  
23       at this time until the Court resolves this issue. Mr. Klein.

24              MR. KLEIN: Thank you, your Honor. Sheldon Klein for  
25       the City of Flint. I have two quick things. One, Ms. Smith

1 is in a unique situation because of the statute of limitations  
2 defense. There are other individuals who were dismissed  
3 because plaintiffs have failed to state a claim against them.

4 THE COURT: Right.

5 MR. KLEIN: Including Mayor Walling, including former  
6 EM -- former Mayor Walling, former EM Ed Kurtz. I assume that  
7 they don't have to --

8 THE COURT: Correct.

9 MR. KLEIN: -- answer.

10 THE COURT: That's a substantive ruling regarding  
11 their liability. They are not in the litigation and do not  
12 need to answer.

13 MR. KLEIN: Okay. And then the final point is if in  
14 fact we are going to do a modified short form complaint to get  
15 rid of people who are no longer in the case, it seems to me  
16 it's equally efficient and clarifying to get rid of counts  
17 that are no longer in the case.

18 THE COURT: It certainly is. I just don't want to do  
19 it before we know what's happening with Ms. Liane Shekter  
20 Smith, so ...

21 MR. KLEIN: Thank you, your Honor.

22 THE COURT: Yeah. Okay. We've got an issue for Mr.  
23 Wright.

24 MR. GALVIN: Your Honor, Joseph Galvin for Mr.  
25 Wright. May I assume that Mr. Wright is not obligated to

1 answer anything until after the Marble and Brown decisions?

2 He has at this point been dismissed from everything else.

3 THE COURT: Yes. That's a fair assumption.

4 MR. GALVIN: Thank you.

5 THE COURT: Mr. Erickson.

6 MR. ERICKSON: Your Honor, Philip Erickson for the  
7 LAN defendants.

8 The Court has already indicated that if a cause of  
9 action has been dismissed in Walters and Sirls, you don't need  
10 to answer any of the other individual cases.

11 I believe the Court also intended in our discussions  
12 upstairs to clarify and enter an order saying that if there's  
13 a box checked in a short form complaint that corresponds to  
14 the cause of action which was omitted in the amended master  
15 complaint, that that checking of the box is a nullity and we  
16 don't have to answer that cause of action either.

17 THE COURT: Correct. So if any individual lawyers  
18 for individual plaintiffs wish to sue or bring their own cause  
19 of action that we've not yet even seen, that has to be in an  
20 addendum to the short form with an explanation and the details  
21 of what the cause of action is, or if you wish to add a  
22 defendant that we don't even know about, you can do that.

23 But you have to do it in a way where you have  
24 explained who that defendant is, what their role was, and so  
25 on. Okay.



1           So then we have the issue of whether any answers or  
2 responsive motions need to be filed in other cases with short  
3 form complaints alleging legionella related injuries, whether  
4 any answers need to be filed or motions before the decision in  
5 Marble and Brown.

6           And the answer is they do not. All litigation  
7 against the legionella related litigation involving McLaren  
8 and Hurley will be stayed until we have -- until I have  
9 addressed the Marble and Brown cases. And Deborah Greenspan  
10 will be working with the census data to make sure we've  
11 identified what those cases are.

12           MR. STERN: Your Honor, Corey Stern. To that end,  
13 when we were in chambers there was a request that I forward an  
14 e-mail --

15           THE COURT: Yes.

16           MR. STERN: -- from February of 2018 to Susan Smith  
17 relating to an order from Your Honor. That e-mail was sent a  
18 few minutes after we left chambers to Ms. Smith. I just  
19 wanted the record to reflect that per Ms. Smith's request, the  
20 e-mail was sent.

21           THE COURT: Okay. And did you also copy Ms.  
22 Greenspan or could you?

23           MR. STERN: I shall.

24           THE COURT: Thank you. Ms. Smith.

25           MS. SMITH: This is Ms. Smith for McLaren confirming

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1 receipt of Mr. Stern's e-mail.

2 THE COURT: Thank you.

3 MS. SMITH: I've been through this enough. I don't  
4 want to have [Inaudible].

5 THE COURT: Okay. Good. Okay.

6 We agreed on issue 5, the nonparties at fault filings  
7 that LAN and/or -- well, I guess that Veolia has -- wishes to  
8 file in the individual cases. That can be achieved with a  
9 one-page filing that references the nonparty at fault much  
10 longer document that's 40, 50 pages long that's filed in  
11 Walters and Sirls.

12 So that has been taken care of. And the case  
13 management order will be amended to include that language.  
14 And what I would ask Mr. Campbell is if you could submit to  
15 the Court the proposed language that you think is appropriate  
16 to amend the CMO.

17 MR. CAMPBELL: Yes, Your Honor. James Campbell for  
18 VNA. We'll do that. Thank you, Your Honor.

19 THE COURT: Okay. There was some discussion in  
20 chambers about whether there's any further coordination with  
21 the state court cases that need to take place that I could  
22 assist in facilitating or should be aware of. And I learned  
23 that there has not been any significant progress. Or no  
24 orders entered at least by the state court judge in this  
25 particular case in the recent period.

1           So we're charging on ahead here. And the parties to  
2           that litigation are also here. So they should be making  
3           progress in that matter.

4           And I think next we're up to a recover from our  
5           special master.

6           SPECIAL MASTER GREENSPAN: Thank you, your Honor.  
7           Deborah Greenspan, Special Master.

8           I'm going to give a brief status update. I think as  
9           the Court knows and probably everybody here knows, I filed a  
10          second interim report of the special master regarding data  
11          compilation on September 16th. So it was filed just recently.  
12          And this -- I want to give a bit of an overview of this. I  
13          think I did a preview at the last status conference, but  
14          there's a couple of interesting points to note for everybody.

15          As you know, this is a -- this process has been  
16          implemented in order to get us an idea of the scope of this  
17          litigation how many claims have actually taken steps or how  
18          many people have taken had steps to hire counsel or bring  
19          lawsuits so we have a better idea of the breadth, the scope of  
20          the litigation, and also understand as best we can something  
21          about those claims.

22          So as of the date of the second interim report, we  
23          have identified 30,948 alleged injured parties. We define  
24          that as somebody who's asserting a claim or has been -- has  
25          taken a step to assert or believe they might have a claim.

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1           Some of these have retained counsel. Some of them  
2           have not retained counsel. And they are -- they have been  
3           provided to me because they have contacted counsel. And so  
4           their names are known. But they haven't yet maintained a  
5           lawyer. There's 11,321 of that 30,000 number that have not  
6           actually hired a lawyer but have contacted a lawyer.

7           We also have duplicate submissions, meaning somebody  
8           has hired perhaps more than one law firm, which is not  
9           infrequent. And we are working with the law firms to try to  
10          identify which law firm actually represents the individual and  
11          if, in fact, they are duplicates. Because in some cases we  
12          are going by the data we have.

13          There may be misspelling of a name or something that  
14          means they're actually not the same person. So we're going  
15          through that process.

16          But once we identified the account for the duplicates  
17          that we think we have and the non retained -- the client who  
18          have not retained lawyers, the net number of parties who have  
19          retained counsel that we can identify as unique individuals or  
20          entities is 17,720. 96 percent of those are individuals. 89  
21          percent of the claims are either personal injury or wrongful  
22          death claims. At least that's what they've identified to us.

23          There are multiple types of injuries that have been  
24          asserted. The largest category of claimed injury is just  
25          simply identified as lead exposure. But there are other

1 injuries, the largest single -- the next largest single  
2 category is emotional or psychological injury. That is skin  
3 rash or irritation, headache, high blood pressure, digestive  
4 or gastrointestinal issues.

5 So those are the types of injuries that are asserted  
6 the most in the information that we have received.

7 There are about 73 individuals who asserted  
8 legionella disease or legionella exposure in their claim  
9 submissions or the data submissions. About 40 percent of the  
10 claims are asserted by minors. Although a footnote to that  
11 statistic, we have about 1,500 individuals who have not  
12 provided a date of birth so we don't know if they're minors or  
13 not.

14 About 7,400 have filed lawsuits out of this group  
15 that we've identified so far. And about 4,000 individuals  
16 report having a blood lead level test taken. They have not  
17 all reported the results of the test, but they have reported  
18 that a test has been taken.

19 So those are sort of basic overview statistics.

20 As I mentioned, we are in the process of trying to  
21 confirm and clarify this duplicate issue to try to determine  
22 whether, in fact, the people we've identified are, you know,  
23 are represented twice in the data or more than twice in the  
24 data or who represents those individuals. And it looks like  
25 --

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1           THE COURT: Can you slow down? Can you slow down  
2 just a little bit?

3           MS. GREENSPAN: Oh, I'm sorry.

4           It looks like from the responses we have received on  
5 the duplicate inquiry, we have about 72 percent of them are  
6 disputed. So there will be some further work to try to  
7 clarify the actual representation in those cases.

8           THE COURT: Okay.

9           MS. GREENSPAN: I think other than that there's some  
10 ongoing work to clarify data. Again, too, there's some things  
11 that we've noticed in the data. There are obvious  
12 inconsistencies so that we're trying to make sure that we get  
13 the right information. Maybe some errors in the way it was  
14 submitted. So we're in that process right now following up  
15 with all the plaintiff firms.

16          THE COURT: Okay.

17          MS. GREENSPAN: Thank you.

18          THE COURT: Excellent. Thank you very much. And  
19 although the report is short, the amount of work and time and  
20 hours that goes into preparing or dealing with this quantity  
21 of data is tremendous. And I appreciate it a great deal.

22          The only other thing that I have on the agenda is  
23 indicating that the next status conference of this nature will  
24 be -- oh, I know. There's something that I did forget. Which  
25 is that I have refined at least in some small ways a discovery

1 dispute resolution protocol. And I will include that in the  
2 next amended case management order.

3 But it essentially sets up a biweekly conference call  
4 with myself and any lawyers relevant to a discovery dispute  
5 that has reached an impasse. And indicates that in general  
6 there will be biweekly calls for approximately one hour to be  
7 held to try to resolve issues as they come up so that they  
8 don't stall out the litigation in any unnecessary way.

9 And to that end one thing that's not in here that I  
10 do in all of my other cases and hopefully would not be a  
11 problem in this case which is that I indicate to parties that  
12 if they're in a deposition and there's a dispute over whether  
13 a witness should answer a question or not and also what we  
14 discussed earlier, whether someone should be sequestered or  
15 not, you can always try calling chambers.

16 If I'm free and you have a court reporter, I'm happy  
17 to get on the record and try to resolve the issue then so that  
18 the deposition doesn't have to be rescheduled. So and I can't  
19 guarantee that that will work because I have about 300 other  
20 cases. So but generally it does work. So just be aware of  
21 that.

22 Is there anything else that has not been covered?  
23 All right. Well, then we will issue an order including some  
24 of the dates and issues. I guess the one thing that we do  
25 need to figure out is a briefing schedule to address the issue

1 of Ms. Shekter Smith as a defendant.

2 And Mr. Morgan, it seems like it may make sense for  
3 you to have the opening brief on that. And what I would ask  
4 you to address is the impact. Knowing that I've issued an  
5 order that says the master long form is what survived in  
6 Walters and Sirls as well as the short form.

7 But knowing that this issue wasn't identified at that  
8 time that Shekter Smith was in pending litigation already,  
9 that's now before the Court. So I just want you to not work  
10 under the illusion that orders that were entered can't be  
11 unentered. So I just don't want you to focus exclusively on  
12 that. But tell me why the master complaint in Walters and  
13 Sirls should keep her out in cases where she was in and it was  
14 not a statute of limitations problem.

15 So how much time do you need to prepare that brief.

16 MR. MORGAN: If you can give me two weeks, Your  
17 Honor. And more than that if there can be a specific  
18 identification of the cases at issue. I mean, I know it's  
19 Marble and Brown. But any others?

20 THE COURT: That's a reasonable question.

21 MR. MORGAN: Thank you.

22 THE COURT: I don't know about getting an answer.

23 MR. STERN: Your Honor, it's hard to identify. Corey  
24 Stern. It's not like any time a case is filed there's a  
25 master list that gets served with a copy of it. The best



1 thing that I would do, you know, for my advice because I've  
2 done it in other cases is to search pacer for the name that is  
3 the defendant and normally the cases.

4 And it's a hard name because there's not a hyphen or  
5 there is a hyphen. So you may get some that have it and some  
6 that don't. But I think that's the only way to figure it out.

7 MR. MORGAN: And Your Honor, I guess for my purposes,  
8 I went back and looked at the order after Mr. Erickson's  
9 statement. It's number 114. And it says the master complaint  
10 shall be the operative pleading for all pending and future  
11 cases.

12 THE COURT: Yes, I know. But what I'm telling you is  
13 that I did not foresee this problem.

14 MR. MORGAN: Right.

15 THE COURT: And so I need to revisit that. Just with  
16 respect to this one issue, please. Not on any other issues.  
17 So and that's what I'm recommending is that do not hang your  
18 hat exclusively on that.

19 If there's a way in which you can argue make your  
20 argument about your client without exclusively relying on the  
21 fact that I was not aware of this issue. I did not know that  
22 she had been sued within the statute of limitations in certain  
23 short form complaints.

24 MR. MORGAN: Okay. It's going to make it very  
25 difficult for me to try to dig in to find out. Because all --

1           THE COURT: Just work on -- I don't need to know  
2 every case.

3           MR. MORGAN: All the case either pending or future I  
4 thought covered the rubric of every individual nonclass  
5 indication.

6           THE COURT: Right. I understand why you would think  
7 that. That's exactly what I said.

8           MR. MORGAN: Yeah.

9           THE COURT: So I understand your thought process, but  
10 I'm asking you to stretch it out a little. You know, go in a  
11 new direction with the thought process which is that that may  
12 have been in error. And I make more mistakes than the average  
13 person. I'm here to tell you that. And that may be one that  
14 I made.

15           MR. MORGAN: I just want to make sure it's not the  
16 onus on me to go back and find out every case that was filed  
17 --

18           THE COURT: No. Let's just use Marble as an example.  
19 You don't have to file that in every case. Just file it in  
20 the Marble case in two weeks.

21           Ms. Smith?

22           MS. SMITH: I was simply -- this is Ms. Smith for  
23 McLaren. I'd be happy to share Mr. Stern's e-mail with Mr.  
24 Morgan to identify the other legionella cases where Ms.  
25 Shekter Smith may have been named in an original complaint,

1 not the short form.

2 THE COURT: Okay.

3 MS. SMITH: So he can address that, at least define  
4 concerns.

5 THE COURT: That would be nice. What I really want  
6 to do is figure out the answer to the problem in general. And  
7 it only takes one case as an example for me to try to sort it  
8 out.

9 MS. SMITH: Understood.

10 THE COURT: So Mr. Goodman, we need a response to Mr.  
11 Morgan's motion from someone.

12 MR. GOODMAN: Well, William Goodman on behalf of the  
13 Marble plaintiffs. We intend to respond.

14 THE COURT: Okay.

15 MR. GOODMAN: Certainly.

16 THE COURT: Good.

17 MR. GOODMAN: Within I assume that the response date  
18 will be controlled by federal rules of civil procedures.

19 THE COURT: Yeah. Or the local rules. Yeah, there  
20 will be.

21 MR. MORGAN: Your Honor, Thad Morgan for Liane  
22 Shekter Smith.

23 Do you want me to just file a brief or a motion? And  
24 if so, what's the title of the motion?

25 THE COURT: The motion is going to be motion -- it

1 can even be motion to enforce the Court's order regarding  
2 application of short form complaints following Walters and  
3 Sirls. And tell me why that's the right decision.

4 MR. MORGAN: Okay.

5 THE COURT: In light of the fact that the decision  
6 was made based on the statute of limitations that doesn't  
7 exist in the Marble case. That's going to be tough. But --  
8 yeah.

9 MR. STERN: Your Honor, Corey Stern. I just want to  
10 note that to the extent there's information being shared about  
11 what the legionella cases are and what the legionella cases  
12 that have been filed are, it's better to use the census data  
13 that has been compiled as of today than to use an e-mail that  
14 contains three or four cases from two years ago or a year and  
15 a half ago in February.

16 So to the extent that there is an e-mail based on  
17 Your Honor's request that identified as of February 2018 what  
18 those cases are, anything that Special Master Greenspan is to  
19 share with Ms. Smith should probably be also shared with Mr.  
20 Morgan so that if he plans on using as an exhibit all the  
21 cases that we know are filed, it's not from an old e-mail but  
22 rather from what's actually been compiled by the Special  
23 Master.

24 THE COURT: Okay. All right. Anything further?  
25 Okay. All right.

September 25, 2019

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1 Well then that will conclude our hearing for today.  
2 I appreciate that all of you are here. And we'll just  
3 continue working hard on these cases.

4 (Proceedings Concluded)

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7 CERTIFICATE OF OFFICIAL COURT REPORTER

8 I, Jeseca C. Eddington, Federal Official Court  
9 Reporter, do hereby certify the foregoing 45 pages are a true  
10 and correct transcript of the above entitled proceedings.

11 /s/ JESECA C. EDDINGTON 10/8/2019  
12 Jeseca C. Eddington, RDR, RMR, CRR, FCRR Date

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